

ITEL

August 29, 1985

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

14785

RECORDATION NO. _____ Filed 1425

SEP 11 1985 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

SEP 11 12 58 PM 1985
MOTOR OPERATING UNIT
ICC OFFICE OF
THE SECRETARY

Honorable James H. Bayne, Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. Bayne:

On behalf of Itel Rail Corporation, I submit for filing and recording, under 49 USC §11303(a) and the regulations promulgated thereunder, the enclosed four (4) executed counterparts of the following document:

New Member
Lease Agreement, dated July 17, 1985, between Itel Rail Corporation and the Kansas City Southern Railway Company

This Lease should be cross-indexed to the Consolidated, Amended and Restated Equipment Trust Agreement, dated as of January 1, 1982, among Itel Corporation, Itel Rail Corporation and First Security Bank of Utah, N.A., which was recorded with the ICC on September 20, 1983 under ICC Recordation No. 14165 *(Cross entry to this)*

The names and addresses of the parties to the aforementioned are:

1. Itel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133
2. Kansas City Southern Railway Company (Lessee)
114 West 11th Street
Kansas City, Missouri 64105

No. 5-254A070
SEP 11 1985
Date
Fee \$ 20.00

ICC Washington, D. C.

The equipment covered by this Lease is forty-nine (49) sixty feet-ten inch (60'10") general purpose XP boxcars, bearing reporting marks/KCS 755001-755486 (non-sequential). *from the series*

Also enclosed is a check for \$20.00 to cover the required filing fees for the Lease and Assignment of Lease.

Once filed, please return to the undersigned the stamped counterpart of the documents not required for filing purposes, together with the receipt and letter from the ICC acknowledging the filings.

Very truly yours,

Denise M. Bottarini

Denise M. Bottarini
Senior Legal Assistant

cc: Howard Chabner
Robert S. Clark
J. Michael Kelly
Ginny Hanger

06/25/85

SEP 11 1985 - 1 05 PM

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT DATED AS OF August 27, 1985, LESSOR'S INTEREST ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., WITH RESPECT TO CARS NUMBERED KCS 75509 - 75548 (NS.)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made as of this 17th day of July, 1985, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California 94133, as the Lessor ("Lessor") and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Delaware corporation, 114 West 11th Street, Kansas City, Missouri 64105, as the Lessee ("Lessee").

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the Lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on any given Schedule, three (3) years from the date on which the first Car on such Schedule was remarked (the "Initial Term").
- B. If this Agreement has not been terminated early and no unremedied default has occurred pursuant to Section 8, the Agreement shall automatically be extended for not more than three (3) consecutive periods of twelve (12) months each (each such twelve month period constituting an "Extended Term") with respect to all of the Cars described on each Schedule, provided, however, that Lessor or

Lessee may terminate this Agreement at the end of the Initial Term or any Extended Term as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than six (6) months prior to the end of the Initial Term or any Extended Term.

3. Supply Provisions

- A. Lessor shall, at its expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 a.m. on the date and at the location such Car is remarked ("Delivery"). After the Cars have been remarked, the Cars shall be moved to Lessee's railroad line at no cost to Lessee. Lessor will use its best efforts to deliver each Car to Lessee within ninety (90) days after the final execution of the Agreement. Lessor warrants that, upon Delivery, each Car shall meet or exceed specifications for interchange service as defined in the Field Manual of the Association of American Railroads ("AAR") Interchange Rules and shall be in acceptable condition for Class A boxcar loading. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in Section 6 of this Agreement. For the purposes hereof and of Section 6, the term "Initial Loading" as to each Car, shall be the earlier of (1) the date such Car first earns revenue after the Delivery of such Car, provided, however, in the event that Lessee has not properly registered the Cars in Universal Machine Language Equipment Register ("UMLER"), the date of Initial Loading shall be the date the Car is first loaded with freight after Delivery, or (2) the thirty-first (31st) day after such Car is interchanged to Lessee. During the Initial Term and any Extended Terms, Lessee shall not remove its railroad reporting marks from the Cars without the prior written consent of Lessor.
- B. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the Lessor and Lessee. During the term of this Agreement, Lessor may, at its expense and only with Lessee's written approval, replace any or all of the Cars with boxcars of equivalent type, dimension, length, height, door type and quality upon prior written notice from Lessor to Lessee; provided, however, Lessee shall not unreasonably withhold its approval with respect to the replacement of any Car; and provided further, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Lessee shall, at its expense and with Lessor's assistance, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the

type subject to this Agreement. Such duties shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and UMLER; and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor, or its agent, is allowed access to any required information with regard to each Car.

- B. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, record keeping associated with maintenance and repair, and billing in accordance with the Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours. Upon Lessor's reasonable request, Lessee shall supply Lessor with telephone reports of the number of Cars in Lessee's possession or control.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange which should have been noted at the time of interchange as provided in the applicable AAR Interchange Rules. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Lessee's railroad line. Lessor recognizes that the Cars will undergo normal wear and tear during the Initial Term and any Extended Terms.
- B. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may only make running repairs to those parts of the Cars specified in Exhibit A, attached hereto, to facilitate continued immediate use of each Car, but shall not

otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at an independent repair facility. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.

- C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same manner that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, self-insure the Cars against property damage and public liability in the manner and to the extent such risks are prudently and customarily insured against by railroad companies on or in respect of similar equipment and in any event affording no less protection than Lessee provides with respect to similar equipment owned by it.
- D. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Cars (2) the lease, sublease or delivery of the Cars (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenues, during the Initial Term or any Extended Term of this Agreement, except taxes on income imposed on Lessor while Cars are on Lessee's lines. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Lessee's obligations under this Section are limited to amounts directly related to possession and use of the Cars.
- E. LESSOR SHALL INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL EXPENSE WHICH IS DUE SOLELY TO MANUFACTURING DEFECTS.

6. Rent

- A. Lessor shall receive all revenues earned by each Car prior to its Initial Loading. Lessee shall pay the Fixed Rent for each Car under Subsection 6.B. beginning upon the Initial Loading of such Car.
- B. The fixed rent ("Fixed Rent") shall be as set forth in Exhibit B, attached hereto.

- C. Within ten (10) days following each calendar month during the Initial Term and each Extended Term, Lessee shall submit to Lessor written verification of the total Fixed Rent Lessee owes Lessor for such Month ("Monthly Report"). Upon Lessor's receipt of each Monthly Report, such Fixed Rent shall be due and payable and Lessor shall be hereby authorized by Lessee to initiate a draft against Lessee's account for such Fixed Rent.
- D. Any Car which remains in a repair facility for repairs in excess of thirty (30) days shall be removed from the rental calculations of this Agreement retroactive to the first (1st) day after such Car enters such repair facility through and including the date such Car is released from the repair facility, provided, however, that (1) any Car which is damaged by Lessee, and (2) any Car which is repaired by Lessee shall not be removed from the rental calculation of this Agreement while repairs are being made to such Car.
- E. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such Month with respect to the maintenance of the Cars. Such report shall include all repair charges received by Lessee during the previous month. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly report and maintenance bill.
- F. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire for such Car ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee. Lessor shall instruct Lessee as to the disposition of damaged Cars within a reasonable time and in no event more than five (5) working days from Lessee's request.
- G. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to so notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- H. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or

damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6.

7. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 7.C. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party, provided, however, that such secured party or owner shall not be entitled to repossess Cars if such repossession is ~~primarily~~ for the purpose of subleasing the Cars to any other entity at a higher rent than the total Fixed Rent. WHD
SDA
- B. Lessee agrees that to the extent it has physical possession and can control the use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and UMLER.
- D. Lessee will not directly or indirectly create, incur, assume any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 7.A. hereinabove. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

- (i) The nonpayment by either party of any sum required herein to be paid by such party within ten (10) days after the date on which such party receives notification from the other party that such payment is due;
- (ii) The breach by Lessee/Lessor of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after receipt of notice or awareness of such breach;
- (iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
- (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which would materially affect Lessee's ability to use the Cars;

B. Upon the occurrence of any event of default hereunder by Lessee, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:

- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or
- (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessee shall, if directed by Lessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter to Lessor at an interchange point or points on Lessee's lines designated by Lessor and Lessor shall henceforth hold, possess and enjoy the same free from any right of Lessee.

Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

- C. Upon the occurrence of any event of default hereunder by Lessor, without limiting Lessee's rights and remedies otherwise provided by law which shall be available to Lessee in addition to the following rights and remedies and Lessee in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessee in enforcing its rights and remedies hereunder, Lessee may, at its option, terminate this Agreement and/or may proceed by any lawful means to enforce performance by Lessor of this Agreement or to recover damages for a breach thereof.

9. Expiration or Early Termination

A. Expiration

Upon the expiration of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at a location or locations on Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to sixty (60) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.
- (ii) Lessee shall, at its expense and to Lessor's specifications, remark the Cars as set forth in Subsection 9.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor, provided, however, Lessor shall notify Lessee as to the new reporting marks to be placed on the Cars before the end of the sixty (60) day storage period provided for in Subsection 9.A.(i)(a). After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car

to such location shall be borne by Lessor. Lessee shall bear the expense of remarking such Cars.

B. Early Termination

- (i) Upon the early termination of this Agreement with respect to any Car due to the occurrence of any event of default by Lessee, Lessee shall promptly return such Car to Lessor as follows:
- (a) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later.
- (b) Lessee shall, at its expense and to Lessor's specifications, remark the Cars as set forth in Subsection 9.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor, provided, however, Lessor shall notify Lessee as to the new reporting marks to be placed on the Cars before the end of the one hundred twenty (120) day storage period provided for in Subsection 9.B.(i)(a). *WWD DPA* After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment.
- (c) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessee. Lessee shall bear the expense of remarking such Cars.
- (ii) Upon the early termination of this Agreement with respect to any Car due to the occurrence of any event of default by Lessor, Lessee shall promptly return such Car to Lessor as follows:

(a) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessor shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on each Schedule which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to sixty (60) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later.

(b) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessor's expense, remark the Cars as set forth in Subsection 9.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor, provided, however, Lessor shall notify Lessee as to the new reporting marks to be placed on the Cars before the end of the sixty (60) day storage period provided for in Subsection 9.B.(ii)(a). After remarking, Lessee shall, at its option, use its best efforts to load the Cars with freight on its lines and deliver them to a connecting carrier for shipment. For each Car which is not loaded by Lessee, Lessee shall, at Lessee's expense and immediately after such Car is remarked as set forth in this Subsection, deliver such Car to any interchange point designated by Lessor.

(c) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessor. Lessor shall bear the expense of remarking such Cars.

C. Remarking, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Lessee; b) complete cleaning of the area where new marks are to be placed subsequent to the removal of markings and company logos as designated by Lessor; c) application of new mandatory markings and company logos; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

10. Indemnities

- A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR ARISING OUT OF LESSEE'S POSSESSION OR CONTROL OF THE CARS, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B. SUBJECT TO SUBSECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

11. Representations, Warranties, and Covenants

Lessee and Lessor represent, warrant and covenant, each with respect to itself that:

- A. Each is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument.
- C. There is no action or proceeding pending or threatened against it before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which it has not disclosed to the other party in writing, nor is it a party to any agreement or instrument or subject to any charter or other corporate restriction which, so

far as it can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of its properties or the ability of it to perform its obligation under this Agreement.

12. Inspection

Lessor shall have the right, upon forty-eight (48) hours prior notice to Lessee, to enter the premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder. Lessor agrees to follow appropriate procedure when inspecting and examining the Cars.

13. Miscellaneous

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessor's consent to a sublease of the Cars shall not be unreasonably withheld, provided that Lessee shall remain primarily liable for all of its obligations under this Agreement and any such sublease shall be in substantially the same form as this Agreement and Lessee shall assign its rights under any sublease to Lessor by means of an assignment substantially in the form of Exhibit C attached hereto.
- B. Both parties agree to execute the documents appropriate to this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Agreement.
- C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a Lessee only.
- D. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by such party or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

- E. Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- F. Each party shall also notify the other in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- G. All notices hereunder shall be in writing and shall be deemed given 1) when delivered personally or 2) when received in the United States Mail, postage prepaid, certified or registered, or 3) when transmitted and received by telex, addressed to the president of the other party or addressed to the individual designated in writing by the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- H. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or early termination of this Agreement.
- I. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL RAIL CORPORATION

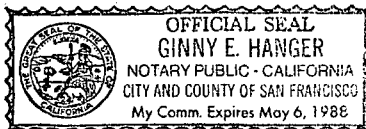
By: *[Signature]*
Title: President
Date: 8/27/85

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By: *W. W. Dumas, Jr.* *A.P.O.*
Title: VPO
Date: 7/16/85

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 27th day of August, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF Missouri)
) ss:
COUNTY OF Jackson)

On this 17th day of July, 1985, before me personally appeared W. N. Detamies, to me personally known, who being by me duly sworn says that such person is Vice Pres-Operations of The Kansas City Southern Railway Company that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

G. B. NIEDERMEYER
Notary-Public-State of Missouri
Commissioned in Jackson County
My Commission Expires May 29, 1987

G.B. Niedermeyer
Notary Public

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to The Kansas City Southern Railway Company subject to the terms and conditions of that certain Lease Agreement dated as of July 17, 1985, 1985.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside		Height	Doors Width	No. of Cars
				Width				
XP	General Purpose Boxcar, 100-ton Plate C, Nailable Steel Floors	KCS 755001, 755010, 755028, 755036, 755044, 755052, 755061, 755079, 755087, 755095, 755109, 755117, 755125, 755133, 755141, 755150, 755168, 755176, 755184, 755192, 755206, 755214, 755222, 755231, 755249, 755257, 755265, 755273, 755281, 755290, 755303, 755311, 755320, 755338, 755346, 755354, 755362, 755371,	60' 10"	9' 6"		11' 4"	10' Sliding	49

EQUIPMENT SCHEDULE NO. 1
(Continued)

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Height	Doors Width	No. of Cars
				Inside	Width			
XP	General Purpose Boxcar, 100-Ton Plate C, Nailable Steel Foors	KCS 755389, 755397, 755401, 755419, 755427, 755435, 755443, 755451, 755460, 755478, 755486	60' 10"	9' 6"		11' 4"	10'	

ITEL RAIL CORPORATION

By: W.D. Hayes
 Title: President
 Date: 8/27/85

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: W.W. Deramus, Jr. Q.S.R.V.
 Title: UPO
 Date: 7/16/85

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 27th day of August, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF Missouri)
) ss:
COUNTY OF Jackson)

On this 17th day of July, 1985, before me personally appeared W. D. Deakmes, Jr., to me personally known, who being by me duly sworn says that such person is Vice Pres - Operations of The Kansas City Southern Railway Company that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

G. B. NIEDERMEYER
Notary Public, State of Missouri
Commissioned in Jackson County
My Commission Expires May 29, 1987

G. B. Niedermeyer
Notary Public

EXHIBIT A

<u>Running Repairs</u>	<u>Running Repairs Continued</u>
Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers in Brackets	Slack Adjuster
Sill Steps	Pedestal Locks
Grab Irons	Couplers
Brake Shoes	Draft Gears
Brake Shoe Keys	Coupler Carriers
Brake Connecting Pin	Center Plates
Brake Head Wear Plates	Lube of Hitches
In-Date-Test	Cotter Keys
Air Brakes	Roller Bearing Adapters
Hand Brakes	Air Hose Supports
Brake Beams and Levers	
Truck Springs	
Door Hardware	

EXHIBIT C

02/25/85

Sublease Assignment

Relating to Supplement # 1

ASSIGNMENT OF 1 , 19 81
SUBLEASE BETWEEN 1
AND 1 TO ITEL RAIL

ASSIGNMENT OF SUBLEASE AND AGREEMENT dated as of 1 , 19 81
(hereunder called this "Assignment"), by and between 1 a
 1 corporation 1 and ITEL RAIL CORPORATION, a
Delaware corporation ("Itel Rail").

WHEREAS, Itel Rail has entered into a Consolidated, Amended, and
Restated Equipment Trust Agreement, dated January 1, 1982, (the "ETC
Modification Agreement"), and pursuant to the ETC Modification Agreement, Itel
Rail has certain obligations with respect to the Itel Corporation, Itel Rail
Corporation 1 % Amended Equipment Trust Certificates, 19 81 Series
 1 , due 19 81 as set forth in Schedule 2 1 of the ETC Modification
Agreement (the "Amended 19 81 Series 1 Trust Certificates"); and

WHEREAS, Itel Rail is the successor in interest to Itel Corporation,
Rail Division, pursuant to Itel Corporation's Amended Plan of Reorganization
which became effective on September 19, 1983; and

WHEREAS, Itel Rail and 1 have entered into a Lease (as
defined in the ETC Modification Agreement) of Equipment (as defined in the ETC
Modification Agreement) dated as of 1 , 19 81 , (such Lease,
together with any amendments or supplements thereto, called the "Lease")
providing for the leasing by Itel Rail to 1 of certain units
of the Trust Equipment (as defined in the ETC Modification Agreement); and

WHEREAS, the Lease may also cover the leasing to 1 of
other Equipment not included as part of the Trust Equipment; and

WHEREAS, in order to provide security for the obligations of Itel Rail
under the ETC Modification Agreement, Itel Rail assigned for security purposes
its rights to and under the Lease, as amended, to First Security Bank of Utah,
National Association, as trustee ("Trustee") as and only to the extent that
the Lease relates to the Trust Equipment by means of an Assignment (as defined
in the ETC Modification Agreement) dated as of 1 , 19 81 ; and

WHEREAS, 1 has entered into a Sublease (as defined in
the ETC Modification Agreement) with the 1 (hereinafter
called the "Sublessee") dated as of 1 , 19 81 (such Sublease
together with any amendments and supplements thereto called the "Sublease")
providing for the subleasing by 1 to the Sublessee of certain
units of the Trust Equipment (the "Subleased Trust Equipment"); and

WHEREAS, in order to provide security for the obligations of [] under the Lease, [] agrees to assign to Itel Rail for security purposes only, [] rights in, to and under the Sublease as and only to the extent that the Sublease relates to the Subleased Trust Equipment.

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto hereby agree as follows:

1. [] hereby assigns, transfers, and sets over unto Itel Rail, as collateral security for the payment and performance of [] obligations under the Lease, with respect to the 19[] Series [] Trust Certificates, all of [] rights, title and interest, powers, privileges and other benefits under the Sublease as and only to the extent that the Sublease relates to the Subleased Trust Equipment set forth in Annex A hereto, including, without limitations, all rights to receive and collect all rentals, profits and other sums payable to or receivable by [] from the Sublessee under or pursuant to the provisions of the Sublease, whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such monies being hereinafter called the "Payments"); provided, however, that until a Default (as defined in the Lease) or an Event of Default (as defined in the Lease) shall occur, it is understood that [] shall be entitled to collect and receive all the Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Sublease, and to apply all Payments to which [] is entitled hereunder to the payment of any and all of [] obligations under the Lease and to retain the balance, if any. Also provided, however, that after the occurrence of a Default or an Event of Default, both as defined in the Lease, and until a Default (as defined in the ETC Modification Agreement) or an Event of Default (as defined in the ETC Modification Agreement) shall occur, it is understood that Itel Rail shall be entitled to collect and receive all Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to apply all Payments to which Itel Rail is entitled hereunder to the payment of any and all of Itel Rail's obligations under the ETC Modification Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, [] hereby irrevocably authorizes and empowers Itel Rail in its own name, in the name of its nominee or in the name of [] or as its attorney, to ask, demand, sue for, collect and receive any and all the Payments to which [] is or may become entitled under the Sublease, and to enforce compliance by the Sublessee with all the terms and provisions thereof. Whenever a Sublease covers other Equipment not included as part of the Subleased Trust Equipment and the amount of any payment due to [] under such Sublease as car hire payments (including both straight and incentive per diem), mileage charges, or other rental revenues is calculated on an aggregate basis for all Equipment subleased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter

defined) of each such payment shall be deemed to be payable with respect to such Subleased Trust Equipment subleased under such Sublease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of Equipment comprising such Subleased Trust Equipment subleased under such Sublease and the denominator of which shall be the aggregate number of units of Equipment (including such units of Subleased Trust Equipment) at the time subleased under such Sublease.

2. This Assignment is executed only as security for the obligations of pursuant to the Lease and to Paragraphs 8 and 14 of the Sublease with respect to the Amended 19 Series Trust Certificates under the Lease and, therefore, the execution and delivery of this Assignment shall not subject Itel Rail to, or transfer or pass, or in any way affect or modify, the liability of under the Sublease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of to the Sublessee shall be and remain enforceable by the Sublessee, its successor and assigns, against, and only against or persons other than Itel Rail, the Trustee or any holder of Amended 19 Series Trust Certificates.
3. To protect the security afforded by this Assignment, agrees as follows:
 - (a) will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Sublease provides is to be performed by ; and
 - (b) At sole cost and expense, will appear in and defend every action or proceeding arising under, growing out of, or in any manner connected with the obligations, duties or liabilities of .
 - (c) Should fail to make any payment or to do any act which this Assignment requires to make or do, then Itel Rail may, but without obligation so to do, first making written demand upon and affording a reasonable period of time within which to make such payment or do such act, but without releasing from any obligation hereunder, make or do the same in such manner and to such extent as Itel Rail may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Itel Rail, and also the right to perform and discharge each and every obligation, covenant and agreement of contained in the Sublease, and in exercising any such powers, Itel Rail may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees and will reimburse Itel Rail for such costs, expenses and fees.

4. Upon the full discharge and satisfaction of all of IT obligations under the Lease and this Assignment, all rights herein assigned to Itel Rail shall terminate and all estate, right, title and interest of Itel Rail in and to the Sublease shall revert to IT.
5. IT will, from time to time, do and perform any other act and will execute, acknowledge and deliver and file, register, deposit and record (and will refile, reregister, rerecord, or redeposit whenever required) any and all further instruments required by law or reasonably requested by Itel Rail in order to confirm or further assure the interests of Itel Rail hereunder.
6. Itel Rail may assign all or any of the rights assigned to it hereby or arising under the Sublease, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Itel Rail hereunder. Itel Rail will give written notice to IT and the Sublessee of any such assignment.
7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

ITEL RAIL CORPORATION

(Seal)

By: _____

Attest: _____
Secretary

(Seal)

By: _____

Attest: _____
Secretary

ANNEX A

<u>No. of Units</u>	<u>Reporting Marks</u>	<u>Subleased Trust Equipment Description</u>	<u>AAR Mechanical Designation</u>
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STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this _____ day of _____, 1985, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of Itel Rail Corporation, that the foregoing _____ was signed and sealed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

STATE OF _____)
COUNTY OF _____) ss:

On this _____ day of _____, 1985, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of _____, that the foregoing _____ was signed and sealed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public